

1 information—that the disclosing party may use to support its claims
2 or defenses.” Fed. R. Civ. P. 26(a)(1)(A)(i). The disclosure must
3 be supplemented or corrected in a “timely manner if the party
4 learns that in some material respect the disclosure . . . is
5 incomplete or incorrect, and if the additional or corrective
6 information has not otherwise been made known to the other parties
7 during the discovery process or in writing.” Fed. R. Civ. P.
8 26(e). If a party does not timely identify a witness under Rule
9 26(a) or (e), it may not use that witness to supply evidence at a
10 trial “unless the failure was substantially justified or is
11 harmless.” Fed. R. Civ. P. 37(c)(1); *Ollier v. Sweetwater Union*
12 *High Sch. Dist.*, 768 F.3d 843, 861 (9th Cir. 2014).

13 Pursuant to the court’s order of June 28, 2013, discovery in
14 this matter closed on December 26, 2013. The deadline for
15 disclosing expert witnesses was October 28, 2013. Plaintiff argues
16 that the witnesses identified by defendants at the pretrial
17 conference were not disclosed to him during discovery. At least as
18 to the doctors, defendants have not argued or demonstrated
19 otherwise. Defendants argue only that the testimony of these
20 doctors will not prejudice plaintiff because they will merely
21 interpret plaintiff’s medical records, and, in fact, their
22 testimony is necessary to explain plaintiff’s medical records to
23 the jury because none of the witnesses previously identified can do
24 so. However, plaintiff has no idea what these witnesses might say
25 and has not had the opportunity to test their possible testimony
26 through discovery. The court cannot conclude that the late
27 disclosure of the doctors’ testimony, even restricted to the
28 interpretation of plaintiff’s medical records, is harmless,

1 particularly as plaintiff's medical records themselves may be
2 admitted as evidence and can speak for themselves. Whether the
3 nature of the doctors' testimony is expert or lay is not necessary
4 for the court to decide; either way, the disclosure of the doctors
5 as witnesses was untimely, and defendants have not shown that the
6 tardy disclosure was substantially justified or harmless. See
7 *Ollier*, 768 F.3d at 861-64. Accordingly, plaintiff's objections to
8 the testimony of Dr. Gedney and Dr. Mar are **GRANTED** in part. These
9 witnesses will not be permitted to testify at trial in the
10 defendants' case-in-chief. The court reserves on whether the
11 defendants should be permitted to call the witnesses Dr. Gedney and
12 Dr. Mar to impeach evidence presented by the plaintiff.

13 Defendants have not yet responded to plaintiff's less obvious
14 objection to the testimony of Greg Smith and Wesley Mattice. (See
15 Doc. #389 at 3). At this juncture, the disclosure of these
16 witnesses also appears to be untimely. Therefore, absent a showing
17 by defendants on or before Wednesday, December 3, 2014, that the
18 disclosure of Smith and Mattice was either timely or, if untimely,
19 it was substantially justified or harmless, the court will also
20 sustain plaintiff's objection to the testimony of those
21 individuals.

22 **IT IS SO ORDERED.**

23 DATED: This 24th day of November, 2014.

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25 UNITED STATES DISTRICT JUDGE
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